IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

Writ Petition No. 2952 of l994

Shri Babu Balwant Admuthe since
deceased by heirs....petitioners
vs
State of Mah and ors..Respondents

Mr. Tejpal Ingle for petitioners
Mr C.R.Sonawane AGP for State

CORAM: A.P.SHAH & D.Y.CHANDRACHUD JJ.

Dated 2l.6.2005

P.C:

l. The short question is whether once land has been acquired for the purpose of resettlement of project affected persons further acquisition of land from the holding of such holder for the same project is permissible. The petitioners are heirs of deceased Babu Admuthe who will be hereinafter referred to as the said deceased. The deceased u was holding land admeasuring 9 hectares 45 Ars at village Dudhgaon, Taluka Miraj, District Sangli. The respondents after making inquiry under the provisions of the Resettlement Act, considering the aforesaid holding of the deceased notified 2 hectares 2 Ars of land for the purpose of resettlement of Varna Project displaced persons vide Notification dated ll.7.l983 under section 4 of the Land Acquisition Act. After receipt of

notice under section 4(l) of the Land Acquisition Act in respect of the aforesaid notified land, the deceased voluntarily surrendered the notified land for the aforesaid purpose and possession was also taken on l0.5.l983. Subsequently award under section ll of the Land Acq Act was passed by the SLAO on l3.l.l986 and compensation was paid.

2. It appears that the deceased was also holding land admeasuring 3 hectares 69 Ars at village Kavathe Piran and applying the provisions of the Resettlement Act the respondents also issued acquisition notice for acquiring land admeasuring 45 Ares from gat no.205l of village Kavathe Piran. The respondents also issued notice under section 4(l) of the Land Acq Act in respect of the aforesaid notified land in the year l985 during which proceedings deceased voluntarily surrendered the said land for acquisition. It appears that notification under section 6 of the Land Acq Act was issued on 6.2.l986 and notice under sections 9(3) and (4) of the said Act was also issued in respect of the said land. The learned counsel appearing for the petitioners made a categorical statement before us that the petitioners have no objection if the said land admeasuring 45 Ars from gat no.205l is acquired by the respondents.

3. By notification under section 4 of the Land Acq Act bearing No.SPL/LAQ/9/SR/449 dated l9.l2.l99l the respondents once again notified following lands for acquisition;

"Gat No.	Area H	A
l397	l	28
l80l	1	42 plus 05 PK
l808	0	73 plus 06 PK
Total	3	54

Thereafter notice under section 4(l) was issued to the petitioners to which they replied inter alia contending that the acquiring body has already acquired land as per the schedule under the provisions of the Resettlement Act.The deceased has already surrendered the said land and, therefore, the acquiring body has no power to acquire the above land once again for the same purpose. It appears that the objections were not accepted by the respondents and Notification under section 6 was published in the government gazette on l.7.l992 and after issuing the notice under sections 9 (3)

and (4) award was passed on 30.ll.l993. The legality and validity of the said acquisition proceedings is questioned in this petition.

4. The issue raised in this petition is directly covered by the decision in Veerchand vs State of Maharashtra, (2002 (5) Mh L J l29l) wherein the Division Bench has held as follows:

> "The entire scheme of the Act of l976 read with Part II of Schedule A leave no manner of doubt that the area of acquired land from the holding as far as practicable has to be in accord with the aforesaid Schedule. On the basis of the size of the holding which the land holder holds on the date of the issuance of notification under section ll, the maximum area from the holding of such land holder as provided in the schedule can be acquired . In other words, once the land has been acquired from the holding of a person for the purpose of resettlement of project affected person in accordance with part II of Schedule A,the right of further acquisition of land from the holding of such holder for the self same reason subsequently is exhausted and it is not open to the State

Government or the concerned authority to repeatedly acquire the land for rehabilitation of project affected person from the holding of such land holder.This appears to be clear from the scheme flowing from various provisions of the Act of l976. The respondent acted in utter disregard of the provision of law in proceedings with further acquisition of petitioners land admeasuring l Hectare 74 Ars out of S.Nos l940, l94l, and l976 when already petitioners' land admeasuring l hectare 74 Ars has been acquired from S.No. 53l which stood concluded in all respects by passing of the award dated 3l.3.l989 and possession having been taken over much earlier".

5 In the light of the decision of the Division Bench the impugned acquisition proceedings are quashed and set aside. Rule is accordingly made absolute with no order as to costs.